UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
--X
MARIANA NAVARRO, on behalf of herself
and all others similarly situated,

Plaintiff,

COMPLAINT

-against-

VILLA FRESH ITALIAN KITCHEN and
JOHN DOE,

Defendants.
--X

Plaintiff MARIANA NAVARRO ("Ms. Navarro" or "Plaintiff"), by and through her counsel, Bell Law Group PLLC, as and for her Complaint in this action against Defendants Villa Fresh Italian Kitchen ("Villa") and John Doe ("Doe") (collectively, "Defendants"), hereby alleges as follows:

PRELIMINARY STATEMENT

1. This action is brought to redress Defendants' unlawful discrimination and wage practices.

2. In particular, Defendants failed to pay Plaintiff proper overtime wages in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* and the New York Labor Law ("NYLL"), §§ 650, *et seq.*

3. Defendants also failed to provide Plaintiff and all others similarly situated with accurate wage statements in violation of NYLL § 195.

4. Defendants further failed to pay Plaintiff and all others similarly situated their spread of hour wages for all days in which ten (10) or more hours passed between when they began work and when they ended work.

5. Defendants also failed to reimburse Plaintiff and all others similarly situated for laundering mandatory uniforms or providing laundry services to Plaintiff and all others similarly situated.

6. Moreover, Defendants unlawfully discriminated against Plaintiff on the basis of her age (41) in violation of the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law §§ 290, *et seq*.

7. Plaintiff's claims under the FLSA are brought as a collective action, pursuant to 29 U.S.C. § 216(b), on behalf of herself and on behalf of all other similarly situated persons who were/are employed by Defendants in the same or similar positions as Plaintiff who were/are not paid overtime at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek for the period of three (3) years before the date of this filing to the date of the final disposition of this action (the "FLSA Collective Period"). Plaintiff and all such other similarly situated persons are jointly referred to herein as the "FLSA Collective."

8. Members of the FLSA Collective are similarly situated because they were all subject to Defendants' common policy and/or practice that resulted in not paying overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek during the FLSA Collective Period.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this action because the action involves the deprivation of Plaintiff's rights under the FLSA pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has supplemental jurisdiction over Plaintiff's claims under the NYLL and NYSHRL pursuant to 28 U.S.C. § 1367(a).

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant Villa Fresh Italian Kitchen is a domestic business corporation doing business in the State of New York and a substantial part of the events or omissions giving rise to this action occurred in this district.

PROCEDURAL REQUIREMENTS

11. Plaintiff filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") on or about March 30, 2017 alleging violations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 626(e), *et seq*. This charge arises out of the same facts alleged herein. Following her receipt of a Notice of Right to Sue, Plaintiff will seek leave to file an Amended Complaint to include claims under the ADEA.

12. Following determination of the exact identity of the John Doe Defendant, Plaintiff will seek leave to file an Amended Complaint to include John Doe's true and correct identity.

13. Any and all other prerequisites to the filing of this suit have been met.

PARTIES

14. Plaintiff Navarro is a resident of the State of New York, residing at 1750 West Main Street, Apartment P3, Riverhead, New York 11901.

15. At all relevant times, Plaintiff was an "employee" of Defendants within the meaning of all applicable statutes.

16. Upon information and belief, Defendant Villa Fresh Italian Kitchen is a New York corporation with a principal place of business at 1314 Tanger Mall Drive, Riverhead, New York 11901.

17. At all relevant times, Villa Fresh Italian Kitchen was an "employer" within the meaning of all applicable statutes, and an enterprise engages in commerce as defined by FLSA §§ 203(r) and (s), with annual gross volume business in an amount not less than $500,000.

18. Defendant John Doe is the owner of Villa. At all relevant times, Defendant Doe controlled the operations and determined the policies and practices of Villa, including, but not limited to, how employees are compensated.

19. Defendant Doe was and remains an "employer" within the meaning of all applicable statutes.

FACTUAL ALLEGATIONS

20. Plaintiff began working for Defendants in or around June 2015 as a Cook and Dishwasher.

21. In the beginning of her career at Villa, Plaintiff worked six (6) days per week, for a total of at least sixty (60) to seventy (70) hours per week.

22. At least four (4) days per week, Plaintiff worked more than ten (10) hours in a day.

23. Plaintiff was paid both by check and by cash.

24. Plaintiff was paid for the first thirty (30) hours per week that she worked by check at a rate of $9.75 per hour.

25. The remainder of the time that Plaintiff worked she was paid in cash at a rate of $9 per hour.

26. Plaintiff and the FLSA Collective were required to wear a uniform consisting of black pants, a red shirt with a company logo, and apron and a hat, which could not be worn as part of Plaintiff's ordinary wardrobe.

27. The clothing that Plaintiff and the FLSA Collective were and are required to wear while working for Defendants constitutes a uniform within the meaning of the NYLL.

28. This mandated uniform cannot be cleaned along with Plaintiff's every-day clothing.

29. Defendants did not wash and/or maintain this uniform for Plaintiff or the FLSA Collective.

30. Defendants did not reimburse Plaintiff or the FLSA Collective for the cost of cleaning and maintaining the uniform.

31. Plaintiff and the FLSA Collective were never paid one and one-half times their regular hourly rate for hours worked over forty (40) in a workweek.

32. Defendants never paid Plaintiff and the FLSA Collective their statutorily required spread of hours pay for all days in which ten (10) or more hours elapsed between the beginning and end of their workday.

33. Defendants failed to provide Plaintiff and the FLSA Collective with an accurate statement or notice of their full wages, hours worked, regular rate of pay, overtime rate of pay, or other information required by NYLL § 195.

34. In or around early October 2016, Plaintiff's hours were cut severely, to the point that she was only being scheduled one (1) day per week.

35. Several weeks later, in or around the end of October 2016, Defendants terminated Plaintiff's employment.

36. Plaintiff is 41 years old, and was the oldest employee working for Defendants.

37. Upon information and belief, the majority of the other employees are under the age of 21.

38. The managers who work at Villa, who have hiring, firing and disciplinary authority, have repeatedly made comments displaying their desire to replace older workers with younger ones.

39. By way of example only, Plaintiff has heard the managers say that it is "better to work with younger people" because they "move faster."

40. The managers have also said that Plaintiff was old, and that she "could not move well anymore."

41. Shortly after making these comments, Defendants hired a new, younger employee, and immediately slashed Plaintiff's hours down to a single day of work per week, and finally terminating Plaintiff outright.

42. Upon information and belief, no other employee's hours were cut in this way.

43. Defendants knew that the foregoing acts violated the FLSA, the NYLL and the NYSHRL and would economically injure Plaintiff and the FLSA Collective.

44. Defendants committed the foregoing acts knowingly, intentionally and willfully.

FLSA COLLECTIVE ACTION ALLEGATIONS

45. Plaintiff brings her FLSA claims as a collective action pursuant to the FLSA on behalf of herself and on behalf of the FLSA Collective.

46. The basic job duties of the FLSA Collective are and were the same as or substantially similar to those of Plaintiff, and the FLSA Collective are and were paid in the same manner and under the same common policies, plans and practices as Plaintiff.

47. The FLSA Collective, like Plaintiff, all have been subject to the same unlawful policies, plans and practices of Defendants, including a failure to pay overtime at a rate of one

and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek.

48. During the FLSA Collective Period, Defendants were fully aware of the duties performed by Plaintiff and the FLSA Collective, and that those duties were not exempt from the overtime provisions of the FLSA.

49. As a result of Defendants' conduct as alleged herein, Defendants violated 29 U.S.C. § 207.

50. Defendants' violations of the aforementioned statute were willful, repeated, knowing, intentional and without a good faith basis, and significantly damaged Plaintiff and the FLSA Collective.

51. As a result of Defendants' conduct, Defendants are liable to Plaintiff and the FLSA Collective for the full amount of their overtime, an additional equal amount in liquidated damages, attorneys' fees and costs incurred by Plaintiff and the FLSA Collective and pre- and post-judgment interest.

52. The exact number of members of the FLSA Collective is unknown to Plaintiff at the present time, but upon information and belief, Defendants are in possession of this information.

53. Plaintiff is currently unaware of the identities of the FLSA Collective. Accordingly, Defendants should be required to provide Plaintiff with a list of all persons employed by Defendants in similar positions during the FLSA Collective Period, along with their last known addresses, telephone numbers and e-mail addresses so Plaintiff can give the FLSA Collective notice of this action and an opportunity to make an informed decision about whether or not to participate in it.

FIRST CAUSE OF ACTION
(Failure to Pay Overtime in Violation of 29 U.S.C. § 207)

54. Plaintiff, on behalf of herself and the FLSA Collective, hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

55. The FLSA requires covered employers, such as Defendants, to pay all non-exempt employees at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek. Plaintiff and the FLSA Collective were not exempt from the requirement that Defendants pay them overtime under the FLSA.

56. During the FLSA Collective Period, Defendants knew that Plaintiff and the FLSA Collective worked more than forty (40) hours per workweek for Defendants. However, Defendants intentionally did not properly pay them overtime for hours worked in excess of forty (40) per workweek.

57. As a result of Defendants' failure to pay Plaintiff and the FLSA Collective overtime at a rate of one and one-half times their regular rate of pay for hours worked in excess of forty (40) hours per workweek, Defendants violated the FLSA.

58. The foregoing conduct of Defendants constitutes willful violations of the FLSA.

59. Defendants' violations of the FLSA have significantly damaged Plaintiff and the FLSA Collective and entitles them to recover the total amount of their unpaid overtime wages, an additional equal amount in liquidated damages, attorneys' fees and costs and pre- and post-judgment interest.

SECOND CAUSE OF ACTION
(Failure to Pay Overtime in Violation of NYLL §§ 650, *et seq.* and 12 N.Y.C.R.R. § 142-2.2)

60. Plaintiff hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

61. NYLL §§ 650, *et seq.* and 12 N.Y.C.R.R. § 142-2.2 require covered employers, such as Defendants, to pay all non-exempt employees at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per workweek in the manner and methods provided in the FLSA. Plaintiff was not exempt from the requirement that Defendants pay her overtime under the NYLL and/or its regulations.

62. Defendants knew that Plaintiff worked more than forty (40) hours per workweek for Defendants. However, Defendants intentionally did not properly pay her overtime for hours worked in excess of forty (40) per workweek.

63. As a result of Defendants' failure to pay Plaintiff overtime at a rate of one and one-half times her regular rate of pay for hours worked in excess of forty (40) hours per workweek, Defendants violated the NYLL and its regulations.

64. The foregoing conduct of Defendants constitutes willful violations of the NYLL and its regulations.

65. Defendants' violations of the NYLL have significantly damaged Plaintiff and entitles her to recover the total amount of his unpaid overtime wages, an additional equal amount in liquidated damages, attorneys' fees and costs and pre- and post-judgment interest at the statutory rate of 9% per annum.

THIRD CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements in Violation of NYLL § 195)

66. Plaintiff hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

67. NYLL § 195 requires covered employers, such as Defendants, to furnish accurate wage statements to their employees with every payment of wages. Plaintiff was not exempt from this requirement.

68. Defendants failed to furnish accurate wage statements to Plaintiff in violation of NYLL § 195 by, *inter alia*, failing to provide Plaintiff with accurate statements of her full wages, hours worked, regular rate of pay, overtime rate of pay or other information required by NYLL § 195.

69. The foregoing conduct of Defendants constitutes willful violations of the NYLL and/or its regulations.

70. Defendants' violations of the NYLL have significantly damaged Plaintiff and entitles her to recover damages of $250 for each day that such violations occurred, up to a total of $5,000, an additional equal amount in liquidated damages, attorneys' fees and costs and pre- and post-judgment interest at the statutory rate of 9% per annum.

FOURTH CAUSE OF ACTION
(Failure to Provide Uniform Maintenance in Violation of the NYLL)

71. Plaintiff hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

72. Defendants required Plaintiff to clean and maintain her uniform at her own expense in violation of the New York Labor Law, including, but not limited to, New York State Hospitality Industry Wage Order § 146-1.7.

73. Defendants' failure to reimburse Plaintiff for the costs of cleaning and maintaining the uniform was willful within the meaning of New York Labor Law § 663.

74. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants the required uniform maintenance reimbursement, liquidated damages, attorneys' fees and costs, and interest at the statutory rate of 9% per annum.

FIFTH CAUSE OF ACTION
(Failure to Pay Spread of Hours Wages in Violation of NYCRR § 146-1.6)

75. Plaintiff hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

76. Plaintiff regularly worked in excess of ten (10) hours in a single workday.

77. Defendants failed to pay Plaintiff an additional hour's pay at the prevailing minimum wage rate before allowances for each day Plaintiff's spread of hours exceeded ten (10), as required by 12 NYCRR § 146-1.6.

78. The foregoing conduct of Defendants constitutes willful violations of the NYLL and/or its regulations.

79. Defendants' violations of the NYLL have significantly damaged Plaintiff and entitles her to recover the total amount of his unpaid spread of hours wages, an additional equal amount in liquidated damages, attorneys' fees and costs and pre- and post-judgment interest at the statutory rate of 9% per annum.

SIXTH CAUSE OF ACTION
(Discrimination in Violation of New York State Human Rights Law)

80. Plaintiff hereby repeats and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth and contained herein.

81. Defendants have discriminated against Plaintiff on the basis of her age in violation of the New York State Human Rights Law by unlawfully cutting her hours and terminating her because of her age.

82. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered and continues to suffer monetary and/or economic harm, for which she is entitled to an award of monetary damages and other relief.

83. As a direct and proximate result of Defendants' unlawful discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered and continues to suffer mental anguish and emotional distress for which she is entitled to an award of monetary damages and other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the FLSA Collective, respectfully requests that this Court:

A. Declare that the practices complained of herein are unlawful under applicable federal and state law;

B. Declare this action to be maintainable as a collective action pursuant to 29 U.S.C. § 216, and direct Defendants to provide Plaintiff with a list of all persons who were/are employed by Defendants in similar positions to Plaintiff during the FLSA Collective Period, including all last known addresses, telephone numbers and e-mail addresses of each such person so Plaintiff can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;

C. Determine the damages sustained by Plaintiff and the FLSA Collective as a result of Defendants' violations of the FLSA, and award those damages against Defendants and in favor of Plaintiff and the FLSA Collective, an additional equal amount in liquidated damages, attorneys' fees and costs and such pre- and post-judgment interest as may be allowed by law;

D. Determine the damages sustained by Plaintiff as a result of Defendants' violations of the NYLL, and award those damages against Defendants and in favor of Plaintiff, an additional equal amount in liquidated damages, attorneys' fees and costs and pre- and post-judgment interest at the statutory rate of 9% per annum;

E. Determine the damages sustained by Plaintiff as a result of Defendants' violations of the New York State Human Rights Law, and award those damages against Defendants and in favor of Plaintiff, to compensate Plaintiff for harm to her professional and personal reputations, loss of career fulfillment, all non-monetary and/or compensatory harm, including, but not limited to, compensation for her mental anguish, and any and all other monetary and/or non-monetary losses suffered by Plaintiff, plus attorneys' fees and costs and pre- and post-judgment interest;

F. Grant Plaintiff an award of punitive damages;

G. Enjoin Defendants from engaging in any acts of illegal retaliation; and

H. Grant Plaintiff and the FLSA Collective such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, on behalf of herself and on behalf of the FLSA Collective, hereby demands a trial by jury on all issues of fact and damages.

Dated: April 20, 2017
Garden City, New York

Respectfully submitted,

BELL LAW GROUP, PLLC

By: __________/s/___________________

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